

# FORM MO-MS

## INSTRUCTIONS

### GENERAL INSTRUCTIONS

Complete the Form MO-MS if taxable income is not 100% from Missouri sources. This form must be completed even if Missouri taxable income is zero. If the corporation owns a percentage of a partnership(s), the partnership factors must be multiplied by the corporation's percentage of ownership, and then added into the corporation's apportionment factors.

#### APPORTIONMENT ELECTION

Missouri Statutes provide seven methods for determining Missouri taxable income from Missouri sources. Choose only **one** of the seven methods and enter the method number on Form MO-1120, Line 9. You may change methods from year to year provided you do not file a consolidated Missouri return (see 12 CSR 10-2.045).

Once an election has been made, it cannot be changed with respect to the same taxable period.

#### METHOD 1

Multistate Allocation and Three Factor Apportionment (Multistate Tax Compact — Section 32.200, RSMo). See instructions for completing Method One.

#### METHOD 2

Business Transaction Single Factor Apportionment — Section 143.451.2(2), RSMo. See instructions for completing Method Two.

#### METHOD 3

Transportation — Section 143.451.3, RSMo. A detailed explanation must be attached.

#### METHOD 4

Railroad — Section 143.451.4, RSMo. A detailed explanation must be attached.

#### METHOD 5

Interstate Bridge — Section 143.451.5, RSMo. A detailed explanation must be attached.

#### METHOD 6

Telephone and Telegraph — Section 143.451.6, RSMo. A detailed explanation must be attached.

#### METHOD 7

Other Approved Method — This method can only be used with prior approval from the Missouri Director of Revenue. A letter of approval must be attached to the return (Section 143.461.2, RSMo).

If the Form MO-MS is not completed, a detailed explanation or letter of approval from the Missouri Director of Revenue must be attached, or the apportionment will be adjusted to 100%.

### METHOD ONE

#### INSTRUCTIONS

A taxpayer must have income from business activity taxable by this state and at least one other state to allocate and apportion

income. Income from business activity includes business and nonbusiness income. The taxpayer's income will be allocated and apportioned in accordance with the Multistate Tax Compact. The first step is to determine which portion of the taxpayer's entire net income constitutes "business income" and which portion constitutes "nonbusiness income." The various items of nonbusiness income are directly allocated to specific states. The business income of the taxpayer is divided between the states in which the business is conducted pursuant to the property, payroll and sales apportionment factors. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income attributable to this state by the apportionment formula constitutes the amount of the taxpayer's partial Missouri taxable income.

#### BUSINESS AND NONBUSINESS INCOME DEFINED

"Business income" is income arising from transactions and activities in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations. "Nonbusiness income" means all income other than business income (See 12 CSR 10-2.075 for examples).

#### TAXABLE IN ANOTHER STATE

A taxpayer is "taxable in another state" if it meets either one of two tests: (a) if by reason of business activity in another state the taxpayer is subject to one of the types of taxes specified, namely: a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business or a corporate stock tax; or (b) if another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether or not that state imposes such a tax on the taxpayer. The first test is applicable only if a taxpayer carries on business activities in another state. If the taxpayer voluntarily files and pays one or more of such taxes when not required to do so by the laws of that state or pays a minimal fee for qualification, organization, or for the privilege of doing business in that state, but (a) does not actually engage in business activities in that state, or (b) does actually engage in some activity, not sufficient for nexus, and the minimum tax bears no relation to the corporation's activities within such state, the taxpayer is not "taxable" in another state. The second test applies if the taxpayer's business activities are sufficient to give the state jurisdiction to impose a net income tax under the Constitution and statutes of the United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provisions of Public Law 86-272, 15 U.S.C.A. Sections 381-385. If you believe you do not have sufficient nexus and you are not liable for Missouri tax, you need to contact the Division of Taxation and Collection, Nexus Section, P.O. Box 295, Jefferson City, MO 65105-0295 or telephone (573) 522-3732 to request a Business Activity Questionnaire.

### STEP 1

Complete Part A, Lines 1 through 4. Enter Line 4 on Part D, Line 5.

### STEP 2

Complete Part D, Lines 1a, 1b, 2a, 2b, 3a, 3b and 4.

**LINES 1A AND 1B — PROPERTY FACTOR**

The numerator of the property factor includes the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the income year for the production of business income. The denominator is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the income year for the production of business income.

Property owned by the taxpayer in transit between locations of the taxpayer is considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller, which is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices, is included in the numerator according to the state of destination. The value of mobile or movable property, such as construction equipment, trucks or leased electronic equipment, which is located within and without this state, is based upon the ratio which the time the property was physically present or was used in this state bears to the total time or use of the property everywhere during the income year. An automobile assigned to a traveling employee is included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

Property owned by the taxpayer is valued at its original cost. As a general rule "original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc. Property rented by the taxpayer is valued at eight times the net annual rental rate. The net annual rental rate is the total annual rental rate paid by the taxpayer, less total annual rental rate received by the taxpayer from subrentals. As a general rule, the average value of property owned by the taxpayer is determined by averaging the values at the beginning and ending of the income year. However, the Missouri Director of Revenue may require averaging by monthly values if such method of averaging is reasonably required to properly reflect the average value of the taxpayer's property for the income year.

**LINES 2A AND 2B — PAYROLL FACTOR**

The payroll factor includes only compensation that is attributable to the business income subject to apportionment. The compensation of any employee whose activities are connected primarily with nonbusiness income shall be excluded from the factor. The denominator of the payroll factor is the total compensation paid everywhere during the income year. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is exempt from taxation, for example, Public Law 86-272, is included in the denominator of the payroll factor. The numerator of the payroll factor is the total amount paid in this state during the income year by the taxpayer for compensation. Compensation is paid in this state if any one of the following tests, applied consecutively, is met: (a) the employee's service is performed entirely within this state; (b) the employee's service is performed both within and without this state, but the service performed without the state, is incidental to the employee's service within the state (the word "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction); (c) if the employee's services are performed both within and without this state, the employee's compensation is attributed to this state: (1) if the

employee's base of operations is in this state; or (2) if there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or (3) if the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state. The term "base of operation" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons, or to replenish stock or other material, repair equipment, or perform any other functions necessary to the exercise of his trade or profession at some other point or points.

**LINES 3A AND 3B — SALES FACTOR**

The denominator of the sales factor is generally all gross receipts derived by a taxpayer from transactions and activities in the course of its regular trade or business operations that produce business income as defined.

In the case of a taxpayer whose business activity consists of manufacturing and selling, or purchasing and reselling goods or products, "sales" includes all gross receipts from the sales of such goods or products. Gross receipts for this purpose means gross sales, less returns and allowances, and includes all interest income, service charges, carrying charges or time-price differential charges incidental to such sales. Federal and state excise taxes (including sales taxes) are included as part of such receipts if such taxes are passed on to the buyer or included as part of the selling price of the product. The term "sales" also includes gross receipts derived by a taxpayer from business transactions or activities which are incidental to its principal business activity and which are includable in business income. As applied to a taxpayer engaged in a business activity other than the manufacturing and selling, or purchasing and reselling of property, "sales" includes the gross receipts from the taxpayer's business activity. In the case of cost plus fixed fee contracts, such as the operation of a government owned plant for a fee, gross receipts includes the entire reimbursed cost, plus the fee. "Sales" includes the gross receipts from the rental, lease or licensing the use of the property, such as patents and copyrights.

The numerator of the sales factor includes the gross receipts from sales which are attributable to this state, and includes all interest income, service charges, carrying charges or time-price differential charges incidental to such sales, regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness. Gross receipts from the sales of tangible personal property (except sales to the United States Government) are in this state if the property is delivered or shipped to a purchaser within this state, regardless of the f.o.b. point or other conditions of sale; or if the property is shipped from an office, store, warehouse, factory or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.

Sales to the United States Government: Gross receipts from the sales of tangible personal property to the United States Government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. Only sales for which the United States Government makes direct payment to the seller pursuant to the terms of its contract constitute sales to the United States Government.

Sales other than sales of tangible personal property are in this state if: (a) the income-producing activity is performed in this state; or (b) the income-producing activity is performed both within and without this state and a greater proportion of the

income-producing activity is performed in this state than in any other state, based on costs of performance.

#### **LINE 4 — APPORTIONMENT FACTOR**

Add percentages on Lines 1, 2 and 3, and divide by factors present. **If one or more of the three factors does not exist (that is, there is no denominator), determine the apportionment factor by dividing by the number of factors present.**

## **STEP 3**

Complete Part C, Lines 1 through 9 and enter Lines 8 and 9 on Part D, Lines 6 and 9. **Nonbusiness income will be considered only if a list itemizing the source of income is attached.**

#### **ALLOCATION OF NONBUSINESS INCOME**

For this purpose, "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

Rents and royalties from real or tangible personal property, capital gains, interest, or patent or copyright royalties, and dividends, to the extent that they constitute nonbusiness income, shall be allocated as follows:

- (a) Net rents and royalties from real property located in this state are allocable to this state.
- (b) Net rents and royalties from tangible personal property are allocable to this state: (1) if and to the extent that the property is utilized in this state; or (2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of, or taxable in, the state in which the property is utilized. The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days the property was physically located in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all royalty or rental periods during the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payor obtained possession.
- (c) Capital gains and losses from sales of real property located in this state are allocable to this state.
- (d) Capital gains and losses from sales of tangible personal property are allocable to this state if: (1) the property had a situs in this state at the time of the sale; or (2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.
- (e) Certain capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.
- (f) Certain interest is allocable to this state if the taxpayer's commercial domicile is in this state.
- (g) Patent and copyright royalties are allocable to this state: (1) if and to the extent that the patent or copyright is utilized by the taxpayer in this state; or (2) if and to the extent that the patent or copyright is utilized by the taxpayer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state. A patent is utilized in a

state to the extent that it is employed in production, fabrication, manufacturing or other processing in the state or to the extent that a patented product is produced in the state. A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from patent royalties or copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent or copyright is utilized in the state in which the taxpayer's commercial domicile is located.

- (h) Certain dividends are allocable to this state if the taxpayer's commercial domicile is in this state (see 12 CSR 10-2.075).

## **STEP 4**

Complete Part D, Lines 7, 8 and 10. Enter Line 10 on Part A, Line 5.

## **STEP 5**

Complete Part A, Lines 6 and 7. Enter Lines 6 and 7 on Form MO-1120, Line 9.

## **METHOD TWO INSTRUCTIONS**

## **STEP 1**

Complete Part A, Lines 1 through 4. Enter Line 4 on Part B, Line 8.

## **STEP 2**

Complete Part B, Lines 1 through 7. The numerator of the single factor apportionment method is one-half the gross receipts from sales transacted partly within and partly without this state, plus the gross receipts from sales transacted wholly within this state. The denominator is the gross receipts from all sales. (Where sales do not accurately reflect the volume of business, substitute "gross receipts from business" for "gross receipts from sales.")

## **STEP 3**

Complete Part C, Lines 1 through 7. Enter Line 7 on Part B, Line 9. Taxpayer shall allocate capital gains, rents, royalties, interest and dividends where the underlying activity producing the income was unrelated to the taxpayer's Missouri line of business. The Missouri Supreme Court has also sanctioned direct allocation where the payor did not conduct business in Missouri. **Non-Missouri source income will be considered only if a list itemizing the source of income is attached.**

## **STEP 4**

Complete Part B, Lines 10 and 11. Enter Line 11 on Part A, Line 5.

## STEP 5

Complete Part A, Lines 6 and 7. Enter Lines 6 and 7 on Form MO-1120, Line 9.

## METHOD THREE, FOUR, FIVE OR SIX INSTRUCTIONS

### STEP 1

Complete Part A, Lines 1 through 4. Enter Line 4 on Part B, Line 8.

### STEP 2

When using Method 3, 4, 5 or 6, enter percentage derived, before taking into account any non-Missouri source income, on Part B, Line 7.

### STEP 3

Complete Part C, Lines 1 through 7. Enter Line 7 on Part B, Line 9. Taxpayer shall allocate capital gains, rents, royalties, interest and dividends where the underlying activity producing the income was unrelated to the taxpayer's Missouri line of business. The Missouri Supreme Court has also sanctioned

direct allocation where the payor did not conduct business in Missouri. Non-Missouri source income will be considered only if a list itemizing the source of income is attached.

## STEP 4

Complete Part B, Lines 10 and 11. Enter Line 11 on Part A, Line 5.

## STEP 5

Complete Part A, Lines 6 and 7. Enter Lines 6 and 7 on Form MO-1120, Line 9.

## METHOD SEVEN INSTRUCTIONS

Method Seven can only be used with prior approval from the Missouri Director of Revenue. **Letter of approval must be attached to the return (Section 143.461.2, RSMo).**